

Factual situations illustrate the distinction between qualified charitable contributions and tuition payments made to an organization that operates a private school. Rev. Rul. 79-99 superseded.

ISSUE

Is the taxpayer entitled to a deduction for a charitable contribution under section 170 of the Internal Revenue Code in each of the situations described below?

FACTS

In each of the situations described below, the donee organization operates a private school and is an organization described in section 170(c) of the Code. In each situation a taxpayer who is a parent of a child who attends the school makes a payment to the organization. In each situation, the cost of educating a child in the school is not less than the payments made by the parent to the organization.

Situation 1. Organization S, which operates a private school, requests the taxpayer to contribute \$400x for each child enrolled in the school. Parents who do not make the \$400x contribution are required to pay \$400x tuition for each child enrolled in the school. Parents who neither make the contribution nor pay tuition cannot enroll their children in the school. The taxpayer paid \$400x to S.

Situation 2. Organization T, which operates a private school, solicits contributions from parents of applicants for admission to the school during the period of the school's solicitation for enrollment of students or while the applications are pending. The solicitation materials are part of the application materials or are presented in a form indicating that parents of applicants have been singled out as a class for solicitation. With the exception of a few parents, every parent who is financially able makes a contribution or pledges to make a contribution to T. No tuition is charged. The taxpayer paid \$400x to T, which amount was suggested by T.

Situation 3. Organization U, which operates a private school, admits or readmits a significantly larger percentage of applicants whose parents have made contributions to U than applicants whose parents have not made contributions. The taxpayer paid \$400x to U.

Situation 4. Organization V, a society for religious instruction, has as its sole function the operation of a private school providing secular and religious education to the children of its members. No tuition is charged for

attending the school, which is funded through V's general account. Contributions to the account are solicited from all society members, as well as from local churches and nonmembers. Persons other than parents of children attending the school do not contribute a significant portion of the school's support. Funds normally come to V from parents on a regular, established schedule. At times, parents are personally solicited by the school treasurer to contribute funds according to their financial ability. No student is refused admittance to the school because of the failure of his or her parents to contribute to the school. The taxpayer paid \$40x to V.

Situation 5. Organization W, operates a private school that charges a tuition of \$300x per student. In addition, it solicits contributions from parents of students during periods other than the period of the school's solicitation for student enrollments or the period when applications to the school are pending. Solicitation materials indicate that parents of students have been singled out as a class for solicitation and the solicitation materials include a report of W's cost per student to operate the school. Suggested amounts of contributions based on an individual's ability to pay are provided. No unusual pressure to contribute is placed upon individuals with children in the school, and many parents do not contribute. In addition, W receives contributions from many former students, parents of former students, and other individuals. The taxpayer paid \$100x to W in addition to the tuition payment.

Situation 6. Church X operates a school providing secular and religious education that is attended both by children of parents who are members of X and by children of nonmembers. X receives contributions from all of its members. These contributions are placed in X's general operating fund and are expended when needed to support all church activities. A substantial portion of the other activities is unrelated to the school. Most members of X do not have children in the school, and a major portion of X's expenses are attributable to its nonschool functions. The methods of soliciting contributions to X from church members with children in the school are the same as the methods of soliciting contributions from members without children in the school. X has full control over the use of the contributions that it receives. Members who have children enrolled in the school are not required to pay tuition for their children, but tuition is charged for the children of nonmembers. Taxpayer, a member of X and whose child attends X's school, contributed \$200x to X during the year for X's general purposes.

LAW AND ANALYSIS

Section 170(a) of the Code provides, subject to certain limitations, for the allowance of a deduction for charitable

contributions or gifts to or for the use of organizations described in section 170(c), payment of which is made during the taxable year.

A contribution for purposes of section 170 of the Code is a voluntary transfer of money or property that is made with no expectation of procuring a financial benefit commensurate with the amount of the transfer. (See section 1.170A-1(c)(5) of the Income Tax Regulations and H.R. Rep. No. 1337, 83rd Cong., 2d Sess. A44 (1954).) Tuition expenditures by a taxpayer to an educational institution are therefore not deductible as charitable contributions to the institution because they are required payments for which the taxpayer receives benefits presumably equal in value to the amount paid. (See *Channing v. United States*, 4 F.Supp. 33 (D.Mass), aff'd per curiam 67 F.2d 986 (1st Cir. 1933), cert. denied, 291 U.S. 686 (1934).) Similarly, payments made by a taxpayer on behalf of children attending parochial or other church-sponsored schools are not allowable deductions as contributions either to the school or to the religious organization operating the school if the payments are earmarked for such children. (See Rev. Rul. 54-580, 1954-2 C.B. 97.) However, the fact that the payments are not earmarked does not necessarily mean that the payments are deductible. On the other hand, a charitable deduction for a payment to an organization that operates a school will not be denied solely because the payment was, to any substantial extent, offset by the fair market value of the services rendered to the taxpayer in the nature of tuition.

Whether a transfer of money by a parent to an organization that operates a school is a voluntary transfer that is made with no expectation of obtaining a commensurate benefit depends upon whether a reasonable person, taking all the facts and circumstances of the case into account, would conclude that enrollment in the school was in no manner contingent upon making the payment, that the payment was not made pursuant to a plan (whether express or implied) to convert nondeductible tuition into charitable contributions, and that receipt of the benefit was not otherwise dependent upon the making of the payment.

In determining this issue, the presence of one or more of the following factors creates a presumption that the payment is not a charitable contribution: the existence of a contract under which a taxpayer agrees to make a "contribution" and which contains provisions ensuring the admission of the taxpayer's child; a plan allowing taxpayers either to pay tuition or to make "contributions" in exchange for schooling; the earmarking of a contribution for the direct benefit of a particular individual; or the otherwise-unexplained denial of admission or readmission to a school of children of taxpayers who are financially able, but who do not contribute.

In other cases, although no single factor may be determinative, a combination of several factors may indicate that a payment is not a charitable contribution. In these cases, both

economic and noneconomic pressures placed upon parents must be taken into account. The factors that the Service ordinarily will take into consideration, but will not limit itself to, are the following: (1) the absence of a significant tuition charge; (2) substantial or unusual pressure to contribute applied to parents of children attending a school; (3) contribution appeals made as part of the admissions or enrollment process; (4) the absence of significant potential sources of revenue for operating the school other than contributions by parents of children attending the school; (5) and other factors suggesting that a contribution policy has been created as a means of avoiding the characterization of payments as tuition.

However, if a combination of such factors is not present, payments by a parent will normally constitute deductible contributions, even if the actual cost of educating the child exceeds the amount of any tuition charged for the child's education.

HOLDINGS

Situation 1.

The taxpayer is not entitled to a charitable contribution deduction for the payment to Organization S. Because the taxpayer must either make the contribution or pay the tuition charge in order for his or her child to attend S's school, admission is contingent upon making a payment of \$400x. The taxpayer's payment is not voluntary and no deduction is allowed.

Situation 2.

The taxpayer is not entitled to a charitable contribution deduction for the payment to Organization T. Because of the time and manner of the solicitation of contributions by T, and the fact that no tuition is charged, it is not reasonable to expect that a parent can obtain the admission of his or her child to T's school without making the suggested payments. Under these circumstances, the payments made by the taxpayer are in the nature of tuition, not voluntary contributions.

Situation 3.

The taxpayer is not entitled to a charitable contribution deduction for contributions to Organization U. The Service will ordinarily conclude that the parents of applicants are aware of the preference given to applicants whose parents have made contributions. The Service will therefore ordinarily conclude that the parent could not reasonably expect to obtain the admission of his or her child to the school without making the transfer, regardless of the manner or timing of the solicitation by U. The Service will not so conclude, however, if the preference given to children of contributors is principally due to some other reason.

Situation 4.

Under these circumstances, the Service will generally conclude that the payment to Organization V is nondeductible. Unless contributions from sources other than parents are of such magnitude that V's school is not economically dependent upon parents' contributions, parents would ordinarily not be certain that V's school could provide educational benefits without their payments. This conclusion is further evidenced by the fact that parents contribute on a regular, established schedule. In addition, the pressure placed on parents throughout the personal solicitation of contributions by V's school treasurer further indicates that their payments were not voluntary.

Situation 5.

Under these circumstances, the Service will generally conclude that the taxpayer is entitled to claim a charitable contribution deduction of \$100x to Organization W. Because a charitable organization normally solicits contributions from those known to have the greatest interest in the organization, the fact that parents are singled out for a solicitation will not in itself create an inference that future admissions or any other benefits depend on a contribution from the parent.

Situation 6.

The Service will ordinarily conclude that the taxpayer is allowed a charitable contribution deduction of \$200x to Organization X. Because the facts indicate that X's school is supported by the church, that most contributors to the church are not parents of children enrolled in the school, and that contributions from parent members are solicited in the same manner as contributions from other members, the taxpayer's contributions will be considered charitable contributions, and not payments of tuition, unless there is a showing that the contributions by members with children in X's school are significantly larger than those of other members. The absence of a tuition charge is not determinative in view of these facts.

EFFECT ON OTHER REVENUE RULINGS

The facts in Situation 4 are essentially the same as in the case of *Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972), on which Rev. Rul. 79-99, 1979-1 C.B. 108, was based. Certain facts were not stated in that ruling. First, the sole function of the organization was the operation of a school. Second, there was an absence of significant potential sources of revenue for operating the school other than contributions by parents. Third, funds normally came to the organization on a regular, established schedule. Fourth, when solicitations were made, parents were solicited on a personal basis by the school treasurer. Rev. Rul. 79-99 is hereby superseded.